SUPREME COURT, U. S.

JUN 15 1967

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 251

GLENN COLLINS,
Petitioner,

vs.

STATE OF TENNESSEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

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INDEX

Citations to Opinion Below 1
Jurisdiction 2
How Federal Questions Are Raised 2
Questions Presented 3
Constitutional Provisions Involved 3
Tennessee Statutes Involved 3
Statement 4
Reasons for Granting the Writ 4
Question No. 1 5
Question No. 2 6
Question No. 3 7
Relief 11
Appendix—Memorandum Opinion of the Supreme Court of Tennessee A1

TABLE OF CASES

Adler v. *Board of Education of City of New York*, 342 U.S. 485, 72 S. Ct. 380 8
American Seeding Mach. Co. v. *Kentucky*, 236 U.S. 660, 35 S. Ct. 456 8
Anderson v. *United States*, 318 U.S. 350, 63 S. Ct. 599 5
Baggett v. *Bullitt*, 377 U.S. 360, 84 S. Ct. 1316 8
Bouie v. *City of Columbia, S. C.*, 378 U.S. 347, 84 S. Ct. 1697 8
Breithaupt v. *Abram*, 352 U.S. 432, 77 S. Ct. 408 6
Buchalter v. *People of State of New York*, 319 U.S. 427, 63 S. Ct. 1129 6
Collins v. *Kentucky*, 234 U.S. 634, 34 S. Ct. 924 8
Cramp v. *Board of Public Instruction of Orange County, Fla.*, 368 U.S. 278, 82 S. Ct. 275 8

In re Oliver, 333 U.S. 257, 68 S. Ct. 499 6
International Harvester Co. v. *Kentucky*, 234 U.S. 216, 34 S. Ct. 853 8
Lanzetta v. *State of New Jersey*, 306 U.S. 451, 59 S. Ct. 618 8
McNabb v. *United States*, 318 U.S. 330, 77 S. Ct. 510 5
Standard Computing Scale Co. v. *Farrell*, 249 U.S. 571 .. 6
U. S. v. *Harriss*, 347 U.S. 612, 74 S. Ct. 808 8
U. S. v. *L. Cohen Grocery Co.*, 255 U.S. 81, 41 S. Ct. 298 8
Winters v. *People of State of New York*, 333 U.S. 507, 68 S. Ct. 665 8
Wright v. *State of Georgia*, 379 U.S. 935, 83 S. Ct. 1240 8

CONSTITUTIONAL PROVISIONS AND STATUTES

Fourteenth Amendment to the Constitution of the United States 3

Tennessee Code Annotated,

39-4301 ..... 2, 3, 7, 10
40-604 4
40-606 4

28 U.S.C. 1257 (3) 2

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

Petitioner Glenn Collins prays that a writ of certiorari issue to review the judgment of the Supreme Court of Tennessee entered in this cause on April 26, 1967.

CITATIONS TO OPINION BELOW

All references to the record herein will refer to the numbers that appear at the bottom of the pages of the certified record of the Supreme Court of Tennessee, which is filed herein, and will be designated as follows: "(R., Vol. —, p. ....)".

Memorandum Opinion of the Supreme Court of Tennessee is not marked for publication and will not be reported. The opinion of the Supreme Court of Tennessee appears at R., Vol. III, p. 3, and copy is annexed hereto as an Appendix, at page A-1.

JURISDICTION

Memorandum Opinion of the Supreme Court of Tennessee was filed March 17, 1967, and judgment of the Supreme Court of Tennessee was entered April 26, 1967. Jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

HOW FEDERAL QUESTIONS ARE RAISED

Petitioner was indicted in Cocke County, Tennessee, but on his motion was granted a change of venue to the adjoining County of Sevier. He was convicted for a violation of Tennessee Code Annotated 39-4301, for allegedly threatening to accuse a doctor of having committed abortions, if the doctor did not forego prosecution of petitioner's brother on a burglary charge. He was sentenced to two years in the penitentiary.

(1) Petitioner was denied due process of law and equal protection of the law, in that at the time of his arrest he was not given a preliminary hearing as required by Tennessee law.

(2) The indictment against petitioner is too nebulous, indefinite, vague and uncertain as to not comply with the due process requirements of the Fourteenth Amendment to the Constitution of the United States.

(3) Tennessee Code Annotated §39-4301, by its terminology, is too vague, indefinite and uncertain as to meet the requirements of the Fourteenth Amendment.

QUESTIONS PRESENTED

Question No. 1. Was petitioner denied due process of law and equal protection of the law in that at the time of his arrest he was not given a preliminary hearing as required by Tennessee law?

Question No. 2. Was the indictment against petitioner too nebulous, indefinite, vague and uncertain as to not comply with the due process requirements of the Fourteenth Amendment to the Constitution of the United States?

Question No. 3. Is Tennessee Code Annotated §39-4301, by its terminology, too vague, indefinite and uncertain as to not meet the requirements of the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the Constitution of the United States:

> § 1. * * * **Due process of law—Equal protection.**— * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

TENNESSEE STATUTES INVOLVED

Tennessee Code Annotated:

> "**39-4301. Threats for purpose of extortion or obtaining action—Penalty.**—If any person, either verbally or by written or printed communication, maliciously threaten to accuse another of a crime, offense, or immoral act, or to do any injury to the person, reputation or property of another, with intent

thereby to extort any money, property, or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall, on conviction, be punished by imprisonment in the penitentiary not less than two (2) years nor more than five (5) years."

"**40-604. Examination required before commitment.**—No person can be committed to prison for any criminal matter, until examination thereof be first had before some magistrate."

"**40-606. Disposition by magistrate.**—The magistrate is required to reduce the examination of the accused to writing, if he submits to an examination, and also all the evidence adduced on both sides, and is authorized to discharge, bail, or commit the accused and to take all necessary recognizances to enforce the appearance of the defendant, the prosecutor or witnesses, at the proper court."

STATEMENT

See "HOW FEDERAL QUESTIONS ARE PRESENTED", *supra.*

REASONS FOR GRANTING THE WRIT

The questions presented here are of major importance and significance to the proper administration of justice in the States. Tennessee, for one State, consistently denies defendants the right to a preliminary hearing when it suits the purpose of the State to keep the facts from the accused until his trial before a petit jury. This violated the fundamental rights of this petitioner, and it violates the rights of any one accused of a criminal violation in Tennessee. It is important that a defendant, when arrested, be accorded his right to a preliminary hearing so he may be represented by counsel if he has one, and if he

does not have counsel, counsel be appointed by the court, and he be fully apprised of the charges against him and be confronted with witnesses to support the charges, and have the right to cross-examine the witnesses. This is a fundamental right which was denied this petitioner.

Further, the petitioner was put to trial upon an indictment which is nebulous, indefinite, and vague, and makes no reference to any Code section of any Tennessee law as having been violated. The indictment does not state that the petitioner was charged with extortion, although the judgment states that he was convicted under the indictment for that offense.

Question No. 1. This Court in *Anderson* v. *United States,* 318 U.S. 350, 63 S. Ct. 599, took cognizance of Tennessee law requiring that a defendant be taken before a magistrate or other committing officer at the time of his arrest, and the Court found that failure to do so in *Anderson* was a denial of the rights of the accused.

Anderson followed the reasoning of the decision of *McNabb* v. *United States,* 318 U.S. 330, 77 S. Ct. 510, which was decided the same day. In both cases, confessions were held involuntary and illegal. In *McNabb* the confessions were ruled out because defendants were not taken immediately upon arrest before the United States Commissioner for a hearing. In *Anderson* the confessions were ruled out because the accused were not taken before a Tennessee committing magistrate before they were questioned by F.B.I. agents and statements obtained while in jail.

McNabb and *Anderson* both recognize how fundamental and essential it is that an accused be accorded a preliminary hearing, and both stand for the proposition that a preliminary hearing is essential to due process of law.

The Fourteenth Amendment prohibits denial of due process of law and denial of equal protection of the law, and the prohibition of the Fourteenth Amendment applies to all actions of a State by whatever modes such action be taken, whether it be legislative, executive or judicial. *Standard Computing Scale Co.* v. *Farrell,* 249 U.S. 571; *Breithaupt* v. *Abram,* 352 U.S. 432, 77 S. Ct. 408; *Buchalter* v. *People of State of New York,* 319 U.S. 427, 63 S. Ct. 1129.

Question No. 2. The indictment is so nebulous and indefinite as to fail to inform petitioner of the charges against him. The indictment does not set forth any Code section of Tennessee that petitioner is supposed to have violated. The indictment did not charge petitioner with making an accusation against the prosecutor, Dr. W. B. Robinson, but only stated: "he threatened to accuse". The indictment does not state what petitioner did by way of threats.

A person is entitled to reasonable notice of the charges against him before it can be said he has had a fair trial consistent with the requirements of the Fourteenth Amendment. *In re Oliver,* 333 U.S. 257, 68 S. Ct. 499.

A mere reading of the indictment itself shows that it is so indefinite as to violate the Fourteenth Amendment. The indictment is as follows:

> "STATE OF TENNESSEE, COUNTY OF COCKE, CIRCUIT COURT FOR COCKE COUNTY, January TERM, 1966.
>
> The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impanelled, sworn and charged to inquire for the body of the county of Cocke and State aforesaid, upon their oath aforesaid, present,

That Glenn (Turkey) Collins, alias on the ..... day of December, 1965, in the State and County aforesaid, did unlawfully, feloniously, verbally and maliciously threaten to accuse Dr. W. B. Robinson of crimes, to-wit: Abortion, in that he the said Dr. W. B. Robinson had been performing abortion upon pregnant women to destroy children before their birth, and that he, the said Glenn (Turkey) Collins, alias, would have Dr. W. B. Robinson, medical license cancelled if he, the said Dr. W. B. Robinson, did not withdraw the criminal prosecutions of Albert Collins, alias, Ralph Atkins, alias, Wendell Loveday, alias, and Ralph Bayless, who were charged with Burglary & Larceny in Cocke County, Tennessee, for breaking and entering the said Dr. W. B. Robinson's medical office, and with the intent of the said defendant then and there, and thereby compel the said Dr. W. B. Robinson threatened, as aforesaid, against his will, to dismiss the criminal warrants against the said Albert Collins, the brother of the said Glenn (Turkey) Collins, alias, Ralph Atkins, alias, Ralph Bayless, alias, Wendell Loveday, alias contrary to the statute, and against the peace and dignity of the State of Tennessee."

(R., Vol. I, p. 2)

The indictment actually does not make good sense.

Question No. 3. The statute under which petitioner stands convicted provides as follows:

"Tennessee Code Annotated 39-4301. Threats for purpose of extortion or obtaining action—Penalty.—If any person, either verbally or by written or printed communication, maliciously threaten to accuse another of a crime, offense, or immoral act, or to do any injury to the person, reputation or property of another, with intent thereby to extort any money, property, or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall, on conviction, be punished by imprisonment in the penitentiary not less than two (2) years nor more than five (5) years."

The indictment does not state so, but the Trial Judge charged the jury that petitioner was accused under said Code section. (R., Vol. I, p. 16)

The words, "or to compel the person so threatened to do any act against his will," is the only portion of this Act under which there could possibly have been a conviction.

We submit that the words, "to do any act against his will", are too indefinite to constitute procedural due process of law. Indefinite, vague and uncertain State statutes violate the Fourteenth Amendment. *Bouie* v. *City of Columbia, S. C.*, 378 U.S. 347, 84 S. Ct. 1697; *Baggett* v. *Bullitt*, 377 U.S. 360, 84 S. Ct. 1316; *Wright* v. *State of Georgia*, 379 U.S. 935, 83 S. Ct. 1240; *Cramp* v. *Board of Public Instruction of Orange County, Fla.*, 368 U.S. 278, 82 S. Ct. 275; *U. S.* v. *Harriss*, 347 U.S. 612, 74 S. Ct. 808; *Adler* v. *Board of Education of City of New York*, 342 U.S. 485, 72 S. Ct. 380; *Winters* v. *People of State of New York*, 333 U.S. 507, 68 S. Ct. 665; *Lanzetta* v. *State of New Jersey*, 306 U.S. 451, 59 S. Ct. 618. See also: *U. S.* v. *L. Cohen Grocery Co.*, 255 U.S. 81, 41 S. Ct. 298; *American Seeding Mach. Co.* v. *Kentucky*, 236 U.S. 660, 35 S. Ct. 456; *Collins* v. *Kentucky*, 234 U.S. 634, 34 S. Ct. 924; and *International Harvester Co.* v. *Kentucky*, 234 U.S. 216, 34 S. Ct. 853.

The testimony in the case does not support any charges made in the indictment. Dr. Robinson, whose testimony was necessary to a conviction in the case, did not give any testimony to support the indictment, and shows the danger of a person being indicted under a nebulous and indefinite statute. The doctor related that the petitioner came to his home and met him in the yard, introduced himself to the doctor, and told him he was a brother of one Albert Collins. The doctor related that petitioner wanted to "fix" his brother's case. The doctor said he didn't let petitioner get any further than the use

of the word "fix", and he told him this was "the third time around" [meaning he had been robbed three times], and said he told petitioner "there wasn't any fixing to be done." (R., Vol. II, page 8) The doctor related that petitioner then said to him: "well, you may put them in the penitentiary, but I will get your license." (R., Vol. II, page 8) The doctor asked him how he was going to do that, and petitioner is supposed to have stated: "well, you have been doing a bunch of abortions and pulling a lot of shady deals up here." (R., Vol. II, p. 8) The doctor then said to petitioner that he had better get off his property and the doctor followed petitioner to the road where petitioner's car was parked. When petitioner got to his car, the doctor said petitioner's wife handed him a gun and petitioner pointed it at him.

The doctor was then asked again what petitioner was supposed to have said to him about petitioner's brother's case, and the doctor answered:

> "A. Well, that's just the exact words he said, said you may put them in the penitentiary, but I will get your medical license and I said, 'how are you going to do that' and he said, 'you have been doing a bunch of abortions and pulling a lot of shady deals up here' and that's as far as it went."
>
> (R., Vol. II, p. 10)

The indictment, if it charges anything, charges petitioner with threatening to expose the doctor for performing abortions if the doctor did not withdraw the prosecution against petitioner's brother; and to show that petitioner was not convicted of the charges in the indictment, the following appears from the doctor's testimony:

"Q. What did he say to you about withdrawing the prosecution against his brother?

* * *

A. He didn't say anything about withdrawing it.

Q. What was he going to do to you?

A. We didn't get that far with it I am trying to tell you. When he come up and said about fixing a deal, I said I am not going to do it because this is the third time around, no need to talk any more and that's when he said he was going to get my medical license."

(R., Vol. II, p. 10)

Under this testimony, petitioner made no threats in an effort to get the doctor to drop the prosecution against his brother, but only said what he was going to try to do to the doctor because the doctor already had his mind made up that he would not be compelled to do anything against his will.

The other testimony in the case shows that the doctor and petitioner had an argument in the course of which the doctor got very angry (R., Vol. II, pp. 27, 33), and petitioner was trying to get away from the doctor and the doctor followed him out to the public road to petitioner's car (R., Vol. II, p. 28), and according to other testimony petitioner had to get a gun to protect himself from the doctor.

The most that can be said from the facts is that petitioner was convicted for slandering the doctor by accusing him of having performed abortions. The doctor himself said petitioner did not threaten to accuse him of having performed abortions to get him to drop the prosecution of petitioner's brother. The Supreme Court of Tennessee, however, has held in this case that under the verbiage of 39-4301 T.C.A. this slanderous action is punishable by two

years imprisonment, and the judgment of the Supreme Court of Tennessee shows that the offense for which petitioner was convicted was "extortion". (R., Vol. III, p. 7) There is no proof in the record that petitioner extorted anything from the doctor or attempted to extort anything.

RELIEF

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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GLENN COLLINS,
Plaintiff in Error,
v.
STATE OF TENNESSEE,
Defendant in Error.

Cocke Criminal
Honorable
George R. Shepherd,
Judge

(Filed March 17, 1967)

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OPINION

Plaintiff in error was convicted of violation of T.C.A. §39-4301, which makes it a penal offense for any person, either verbally or in writing, maliciously to threaten to accuse another of a crime, offense, or immoral act, or to threaten to do any injury to the person, reputation or property of another, with intent thereby either to extort money, property or pecuniary advantage, or to compel the person threatened to do any act against his will.

Plaintiff in error was sentenced to serve two years in the State Penitentiary. From his conviction he has perfected an appeal in the nature of a writ of error to this Court, with a single assignment of error to the effect that

the evidence preponderates against the verdict of the jury and in favor of the innocence of plaintiff in error.

At the outset, we note the well settled principles under which this Court reviews criminal cases, these being that the verdict of guilty approved by the trial judge dispels the presumption of innocence and substitutes in this Court a presumption of guilt, accredits the witnesses for the State, and casts upon the accused the burden in this Court of establishing that the evidence preponderates against the verdict. *Furlotte* v. *State*, 209 Tenn. 122, 350 S.W.2d 72 (1961); *Shiflet* v. *State*, 216 Tenn. 365, 392 S.W.2d 676 (1965).

In the present case the plaintiff in error did not testify or offer any evidence in his defense. He simply insists that the evidence of the State was insufficient to establish his guilt under the statute.

The testimony is uncontradicted that plaintiff in error went to the home of Dr. W. B. Robinson in Cocke County, Tennessee, on December 25, 1965. Dr. Robinson testified that the brother of plaintiff in error had been charged with burglarizing the doctor's office and he testified without contradiction that plaintiff in error stated that he had come to the doctor's home for the purpose of "fixing" the case against his brother. Dr. Robinson testified that plaintiff in error threatened him, and made threats that unless the doctor dropped the charges against his brother, plaintiff in error would make charges against the doctor for having performed illegal operations and other "shady deals," and would cause the doctor to lose his license. The doctor further testified that plaintiff in error threatened to shoot him and that plaintiff in error obtained a pistol from his wife, who was sitting in an automobile near the doctor's property.

The testimony of Dr. Robinson was not only introduced without contradiction, but it was corroborated in many essential particulars by the testimony of the mother of Dr. Robinson and his son.

This Court held in *Furlotte* v. *State, supra,* that an intention to extort money or other pecuniary advantage is not essential for conviction under the statute in question. We think that there can be no question but that accusation of a criminal offense or a threat of bodily harm in order to induce one to drop criminal charges would be embraced within this statute. *State* v. *Needham,* 147 Tenn. 50, 245 S.W. 527 (1922); *State* v. *Morgan,* 50 Tenn. 262 (1871).

Far from being contrary to the preponderance of the evidence, the verdict of the jury is overwhelmingly supported by the evidence, in our opinion, and the assignment of error is without merit.

The judgment of the trial court is affirmed at the cost of plaintiff in error.

/s/ William J. Harbison,
William J. Harbison,
Special Justice

Burnett, C. J., Dyer,
Chattin and Creson,
JJ., concur